

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

<p>THE NORTHEAST OHIO COALITION FOR THE HOMELESS, <i>et al.</i>,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>JON HUSTED, in his official capacity as Secretary of State of Ohio, <i>et al.</i>,</p> <p>Defendants.</p>	<p>CASE NO. 2:06-cv-896; 2:12-cv-562</p> <p>Judge Algenon Marbley</p> <p>Magistrate Judge Terrence P. Kemp</p>
<p style="text-align: center;">DECLARATION OF DR. LAWRENCE H. STIFFMAN</p>	

DR. LAWRENCE H. STIFFMAN declares under penalty of perjury as follows:

1. I make this declaration based on personal knowledge acquired through my work at Applied Statistics Laboratory, Inc. ("ASL").
2. I am the owner of ASL, a survey and market-research firm based in Ann Arbor, Michigan. ASL specializes in legal economics, survey research, market research, and quantitative analysis. In particular, ASL has conducted over 30 surveys under contract with and on behalf of 12 state bar associations concerning legal economics.
3. I hold a Ph.D. and a Masters of Public Health obtained from the University of Michigan in 1968 and 1978 respectively.
4. From 1981 to the present, various state bar associations have commissioned ASL to design, conduct, and analyze surveys of their members. These include the bar associations of Arizona, Colorado, Florida, Iowa, Kansas, Maine, Michigan, New Hampshire, New Mexico, New York, Ohio, and Wisconsin.

5. In addition to my work with ASL, I have researched and analyzed labor-utilization and billing practices at law firms nationally for the Institute of Law Firm Management's Annual Survey on Law Firm Compensation, published by the University of Michigan's Institute of Continuing Legal Education. I have testified more than 25 times as an expert witness regarding legal fees and prevailing hourly rates, and have prepared affidavits or reports in an additional 50 matters, including testimony (2002) concerning reimbursement of assigned counsel/panel attorneys practicing in New York City.

6. In 2007, 2010, and 2013 the Ohio State Bar Association (OSBA) commissioned ASL to assist in conducting economic surveys of all active attorneys in Ohio (the "Survey"). ASL has conducted similar studies for the OSBA triennially since the 1980s.

7. I am the person most familiar and conversant with the underlying data-gathering processes and data gathered in the OSBA Survey.

8. Specifically for 2013, ASL developed the survey-fielding protocols and procedures, and then in April and May 2013, fielded a 59-question survey. The OSBA then disseminated the survey to its members and others for whom they believed they had valid email addresses. The 2013 survey was distributed to 19,328 such addresses. ASL then prepared and analyzed the data, and generated reports interpreting the results. In June 2013, the OSBA published online a report—*The Economics of Law Practice in Ohio in 2013*—encompassing certain key 2013 Survey results and cross-tabulations.

9. In 2013, ASL received Survey responses from approximately 1,000 private practitioners providing hourly rate information, statewide. That represented a 5.17% response rate from the email addresses that the OSBA attempted to contact. (I do not have information regarding how many of those were invalid email addresses.)

10. Question 31 of the Survey questionnaire asked that respondents indicate their current (2013) attorney hourly billing rate; Question 2 asked where in Ohio respondents were located; Question 3 asked for the year that a respondent was admitted to the Bar; and Questions 15–17 asked respondents to state their top areas of practice (up to three only) by sources of income. Not every practitioner who provided hourly rate information provided additional information such as the practice area, number of years in practice, location, or the size of firm. Thus, our ability to further analyze rate data by those dimensions is limited.

11. Based on my considerable experience in conducting legal-professional surveys, the fee tables and data, for a number of reasons, do not provide a representative sample of all private practitioners in Ohio; specifically, the reported rates *significantly understate* hourly rates for the active private-practitioner population.

12. First, the Survey does not reach out to all Ohio private practitioners.

13. Second, only 5.17% of those targeted chose to respond with hourly rate data. In our considerable experience with planning and conducting these surveys, the busiest and most successful attorneys commanding the highest hourly billable rates are the least likely to report those rates. That is, those attorneys who choose to respond to such surveys are generally those who are not as busy with their practices, and thus would tend to be those whose services are less in demand.

14. Third, in our experience, the firms with the highest rates, which would include a large number of lawyers whose absence skews the results downward—tend to *deliberately* opt out of responding to rate surveys, out of concern for giving away confidential business information. Thus, again, the hourly rates reported likely significantly *understate* the actual rates of the active private-practitioner attorney population. In addition, the data gathered do not include much information about the services that the lawyers provide, or information that would permit a comparison of lawyers as to their skill, experience, or reputation.

15. It is for these reasons among others that the *OSBA Economics of Law Practice in 2013* report expressly warns on page 4: **“This reference is not intended for use in setting minimum, average, or maximum attorney fees or salaries.”**

16. In my experience with the Ohio data, lawyers who practice in downtown Cleveland tend to have the highest billable-hour rates in Ohio, followed by lawyers who practice in Greater Cleveland, followed by lawyers who practice in downtown Columbus.

17. Attached and incorporated as **Exhibit A** is a summary I have prepared comparing the *NEOCH, et al. v. Husted, et al.* attorneys’ petitioned rates to the survey’s hourly rate data drawn for downtown Cleveland, downtown Columbus, and Dayton for private practitioners whose years of practice roughly align with those of the fee petitioners’ attorneys. The exhibit similarly compares the *NEOCH* attorneys’ rates to the survey’s hourly rate data for private practitioners practicing civil rights, again, whose years in practice match those of the fee petitioners’ attorneys.

18. More complete tables with the underlying downtown Cleveland, Columbus, and Dayton and practice area data are contained in the attached **Exhibit B**. The published 2013 report presented selected cross-tabulations of the underlying data, but not as much detail regarding all of the regional data that were gathered. The information presented here is drawn from the 2013 Survey’s original raw data, which ASL maintains. The additional statistics reflect cross-tabulations of years in practice and location—downtown Cleveland, downtown Columbus, and Dayton—as well as years in practice and practice area (civil rights), which the 2013 published report did not present. The civil-rights table includes responses from those statewide who answered “civil rights” for either their primary, secondary, or tertiary area of practice.

19. I have reviewed Defendants’ argument regarding the OSBA’s *Economic of Law Practice in Ohio in 2013* report in their opposition brief to Plaintiffs’ motion for fees. Defendants are misinterpreting and misusing the report.

20. First, the report's statewide aggregate data for all practitioners includes far too many irrelevant practitioners and thus does not make it possible to compare Plaintiffs' attorneys' rates "with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation," what I understand to be the U.S. Supreme Court's standard for a reasonable hourly rate under *Blum v. Stenson*, 465 U.S. 886, 896 n. 11 (1984). (I am familiar with this standard from my work as a fee expert.) It is simply wrong to apply the statewide data for all practitioners and ask a court to infer that those practitioners' rates "prevail in the community" (i.e., either the venue of the Southern District of Ohio or the Southern District of Ohio-admitted Plaintiffs' attorneys' home cities). Nor is it correct to infer that the attorneys statewide are of "comparable skill, experience, and reputation." The Survey includes *non*-litigators, transactional attorneys, those doing relatively simple legal work, countless lawyers with no civil-rights or constitutional-law experience, litigators who do simple and non-complex litigation, and countless lawyers who do not practice in federal court. And indeed, as reported above, those with the busiest and most complex practices tend not to respond to the Survey at all.

21. If one were to use the Survey or report in setting minimum, average, or maximum attorney fees—which one should not do—then closer points of comparison in the Survey's data are the practice-area data (in this case, the civil-rights practice practitioners' data), which show a range from \$300 to \$800 per hour or the rates by the city of the practitioner who is admitted in the Southern District. One could also look at the location where the court in question is, in this case, downtown Columbus, although that would not take into account the fact that lawyers in other major cities are admitted to practice there. Each of those data points, again, would be expected to significantly understate rates because the higher-billing attorneys tend to opt out.

22. All of the petitioned rates are well within the range of 2013 hourly rates reported by Ohio's civil-rights attorneys who responded to the Survey. They are also generally within the range

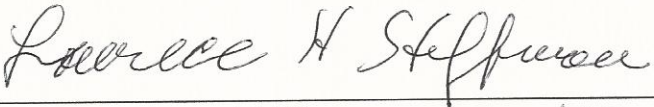
of rates charged by survey-respondents practicing in similarly complex areas such as civil-trial practice, employment law (labor), and administrative law. Based upon the statistics generated from the Survey's raw data, presented in Exhibits A and B below, the 2013 hourly billing rates in this matter also generally fall well within or close to the range of fees customarily charged for legal services by attorneys of similar years in practice and in the fee-petitioning attorneys' home cities.

23. The approach I take to analyzing fee petitioners' rates—given the severe limitations of the Survey hourly billable-rate data—does not address other measures that more closely approximate whether the rates are those of attorneys with “reasonably comparable skill, experience, and reputation.” Such evidence of the hourly market values of the individual attorneys includes their customary hourly charges with fee-paying clients, and actual rates awarded in other court orders.

24. The above statements and analysis are true to a reasonable degree of statistical certainty.

25. I have not charged for the time that I have spent performing this analysis and preparing this declaration, as I view it as a pro bono service to the legal profession in connection with the Survey data that I maintain for the OSBA.

I declare under penalty of perjury of the laws of the United States of America on December 17, 2013 that the foregoing is true and correct.



Dr. Lawrence Howard Stiffman 12/17/13

Exhibit A

**Distributions of Referent 2013 Hourly Billing Rates,
Petitioning Attorneys vs. Downtown Cleveland, Columbus, or Dayton Attorneys by Position,
and Years in Practice¹**

<i>Petitioner (City)</i>	<i>Position</i>	<i>Yrs in Practice</i>	<i>Petitioned 2013 Hourly Billing Rate</i>	<i>OSBA Survey Referent 2013 Hourly Billing Rates by Petitioner's City of Practice and Practice Area (distribution of median rate, mean rate, 75th percentile, 95th percentile)</i>
Chandra (Clvd.)	Managing Partner	19	\$435	All downtown Cleveland attorneys: \$300, \$337, \$400, \$675 Civil rights (all Ohio)²: \$315, \$400, \$550, \$800
Colombo (Cols.)	Partner	13	\$360	All downtown Columbus attorneys: \$275, \$262, \$325, \$360 Civil rights (all Ohio): \$330, \$302, \$350, \$350
Gentry (Dayton)	Partner	18	\$350	All Dayton attorneys: \$200, \$207, \$225, \$270 Civil rights (all Ohio): \$315, \$400, \$550, \$800
Gupta (Clvd.)	Of counsel	9	\$300	All downtown Cleveland attorneys: \$285, \$285, \$330, \$400 Civil rights (all Ohio): \$300, \$315, \$350, \$400
Miller (Cols.)	Associate	7	\$275	All downtown Columbus attorneys: \$218, \$223, \$255, \$275 Civil rights (all Ohio): \$300, \$315, \$350, \$400

¹ Referent data distributions abstracted from three summary tables of raw Downtown Columbus, Dayton, and Downtown Cleveland survey data in **Exhibit B** below.

² This figure includes those who answered "civil rights" for either their first, second, or third (primary, secondary, or tertiary) area of practice.

McTigue (Cols.)	Managing Partner	33	\$550	<p>All downtown Columbus attorneys: \$300, \$335, \$415, \$650</p> <p>Civil rights (all Ohio): \$238, \$281, \$350, \$675</p>
Zaranko (Clvd.)	Senior Paralegal	17	\$120	<p>All Ohio paralegals: \$91–\$100; \$131–\$140; >\$140</p> <p>The requested rate is somewhere between the 50th and 75th percentiles statewide; Cleveland rates are higher</p>

Source: Raw data generated from *Economics of Law Practice Survey in Ohio in 2013* conducted by The Applied Statistics Laboratory, Ann Arbor, Michigan (summary report providing selected cross tabulations was published June 2013).

Exhibit B**Various Distributions of Hourly Billing Rates for Downtown Columbus, Cleveland, and Dayton and for Civil-Rights Practice Area 2013****Hourly Rates (All Ohio locations)**

Years in Practice	Valid N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
1 to 2	56	\$133	\$150	\$153	\$188	\$250
3 to 5	69	\$150	\$175	\$174	\$205	\$255
6 to 10	86	\$175	\$200	\$207	\$245	\$325
11 to 15	86	\$175	\$200	\$232	\$275	\$400
16-25	189	\$175	\$200	\$233	\$275	\$425
26-35	274	\$175	\$225	\$249	\$300	\$450
36+	239	\$200	\$250	\$261	\$325	\$450
Total	999	\$175	\$210	\$233	\$275	\$415

Hourly Rates (Downtown Cleveland)

Years in Practice Cut	Valid N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<6	12	\$170	\$225	\$197	\$243	\$255
6 to 10	13	\$225	\$285	\$285	\$330	\$400
11 to 15	15	\$200	\$245	\$258	\$330	\$435
16-25	27	\$200	\$300	\$337	\$400	\$675
26-35	20	\$220	\$288	\$334	\$405	\$700
36+	23	\$250	\$325	\$343	\$450	\$525
Total	110	\$200	\$275	\$306	\$350	\$625

Hourly Rates (Downtown Columbus)

Years in Practice Cut	Valid N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<6	13	\$150	\$200	\$187	\$215	\$275
6 to 10	8	\$195	\$218	\$223	\$255	\$275
11 to 15	11	\$185	\$275	\$262	\$325	\$360
16-25	19	\$195	\$315	\$305	\$400	\$435
26-35	22	\$225	\$300	\$335	\$415	\$650
36+	27	\$270	\$350	\$343	\$400	\$520
Total	100	\$203	\$275	\$295	\$373	\$510

Hourly Rates (Dayton)

Years in Practice Cut	Valid N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<6	5	\$150	\$165	\$161	\$185	\$195
6 to 10	8	\$200	\$203	\$219	\$225	\$300
11 to 15	4	\$213	\$243	\$240	\$268	\$275
16-25	13	\$190	\$200	\$207	\$225	\$270
26-35	15	\$175	\$240	\$229	\$265	\$350
36+	12	\$205	\$245	\$257	\$278	\$490
Total	57	\$195	\$220	\$223	\$250	\$330

**All Ohio locations - Civil Rights
(Primary, Secondary, and Tertiary)**

Years in Practice	Valid N	25th Percentile	Median	Mean	75th Percentile	95th Percentile
<6	1	\$175	\$175	\$175	\$175	\$175
6 to 10	5	\$275	\$300	\$315	\$350	\$400
11 to 15	3	\$225	\$330	\$302	\$350	\$350
16-25	8	\$235	\$315	\$400	\$550	\$800
26-35	10	\$175	\$238	\$281	\$350	\$675
36+	3	\$400	\$425	\$425	\$450	\$450
Total	30	\$220	\$305	\$331	\$400	\$675

Source: Raw data generated from *2013 Economics of Law Practice Survey in Ohio* conducted by The Applied Statistics Laboratory, Ann Arbor, Michigan (summary report providing selected cross tabulations was published June 2013).